

UPDATED INFORMATIVE DIGEST

AMENDMENTS TO THE REGULATION FOR THE STATEWIDE PORTABLE EQUIPMENT REGISTRATION PROGRAM

Sections Affected: Amendments of title 13, California Code of Regulations (CCR), article 5, sections 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, and repeal of 2466.

Background

California Health and Safety Code sections 41750 through 41755 mandate that the Air Resources Board (ARB or Board) adopt a regulation to establish a voluntary uniform statewide program for the registration and regulation of portable engines and associated equipment units in California. In developing the regulation, ARB is required to evaluate emissions, identify emission control technologies, establish emissions limits and control requirements, and hold public meetings with affected parties. ARB is also required to adopt a fee schedule to recover its costs to administer the program and a fee schedule for the recovery of costs by the local air pollution control and air quality management districts (districts) to enforce the regulation.

The Statewide Portable Equipment Registration Program Regulation (Statewide Regulation or Statewide Program) (Statewide Regulation or Statewide Program) was first approved by the Board on March 27, 1997, and became effective on September 17, 1997. The Board also approved amendments to the Statewide Regulation on December 11, 1998, which allowed portable engines operating in Statewide Territorial Waters (STW) and associated equipment units such as tub grinders, trommel screens, and wood chippers into the Statewide Program.

Once registered in this voluntary program, owners and operators of portable engines and associated equipment units can operate throughout the State without having to obtain permits from individual districts. State law prohibits the districts from permitting or regulating portable engines and associated equipment units registered in the Statewide Program. However, the districts play an important role in enforcing the requirements of the Statewide Regulation.

The Statewide Regulation requires a phase-in of cleaner technologies that would result in the reduction and eventual elimination of older higher-emitting engines. By January 1, 2010, engines registered in the Statewide Program must be replaced or modified to meet California or federal nonroad emission standards (certified engines). Portable engines used on dredges must be retrofitted or replaced with certified engines by January 1, 2005.

Since 1997, ARB staff has received approximately 5,600 registration applications. Currently, the PERP program has about 14,500 portable engines, 1,500 associated equipment units, and another 5,200 pieces of military tactical support equipment (TSE) registered in the program.

The amendments to the Statewide Regulation were approved by the Board with modifications at the February 26, 2004, public hearing. The amendments are intended to clarify the uses of portable engines that are not appropriate for registration in the Statewide Program, allow uncertified engines currently operating in California to register in the program until December 31, 2005, and increase program fees to provide adequate funding for the ARB to administer the Statewide Program. Other modifications include changes to recordkeeping and reporting requirements, additional requirements to improve the clarity and enforceability of the Statewide Regulation, and miscellaneous administrative changes.

ARB staff prepared an Initial Statement of Reasons (ISOR) for the proposed amendments to the Statewide Regulation that serves as the report on the need and appropriate degree of regulation for portable engines and associated equipment units registered in the program.

Description of the Regulatory Action

Applicability Section

The amendments clarify that certain types and uses of portable equipment are not eligible for registration under the Statewide Program. These uses include portable generators used to feed the electrical grid or used to provide primary or supplemental power to a building, stationary source or stationary equipment. Also, the amendments would propose that registered portable engines that power equipment units that are permitted by districts or mounted on the same trailer or skid with permitted equipment are ineligible under the Statewide Program and need to obtain permits with the districts. Ineligible equipment includes boilers, heaters, and hot mix asphalt plants. However, the Statewide Regulation allows registered portable engines to be used in maintenance and repair operations, emergency operations, and in remote locations, where grid power is unavailable.

Previously Exempt and Unpermitted Engines

Currently, the Statewide Regulation allows only certified engines to register in the Statewide Program. The amendments to the Statewide Regulation would allow any portable engine operating in California before 2003, certified or not, to apply for registration under the Statewide Regulation until December 31, 2005. After that time, only certified engines meeting the most stringent emission standard will be allowed into the Statewide Program. The Statewide Regulation was also modified to allow additional time (180 days, instead of 90 days) for ARB staff to process applications for these uncertified engines. The extension in processing time ends on January 1, 2006 and reverts back to the 90-day processing timeframe.

Increase Program Fees

Pursuant to Health and Safety Code (H&SC) section 41752(d)(1), ARB can impose and collect fees to cover resources necessary to operate and maintain the Statewide Program. The current registration, renewal, and administrative fee schedule is not adequate to cover ARB resources that are allocated for the program nor is it adequate for the increased workload resulting from the proposed amendments. The amendments would increase registration fees from \$90 for a three-year registration to \$270 for a three-year registration. Until the end of 2005, new program participants would also be assessed an additional \$100 registration fee for each engine that is being registered. The additional \$100 fee is intended to cover temporary resources required for processing uncertified engine applications and for public outreach efforts. Renewal fees would increase from \$90 for a three-year renewal to \$225 for a three-year renewal. Also, administrative fees would be increased to complete tasks such as issuing a replacement sticker or modifying information for a registered engine. The increased fees would allow ARB to recover the full cost of administering the Statewide Program.

Recordkeeping and Reporting

To improve enforceability and clarity of the Statewide Regulation, the amendments would require owners/operators of engines who are subject to hourly or daily fuel consumption limitations, to install hour meters or fuel flow meters. For each unit, the owners/operators would also be required to maintain a log onsite for each unit to track the operation of the engine or equipment unit and to maintain those records for five years instead of two years. The amendments would also require operators of generators used to power a building or stationary source during an unforeseen interruption of electrical power (emergency event) to record the location, date, and length of time the generator was operated.

To simplify reporting requirements, the amendments would no longer require the operators of uncertified engines to submit annual reports to the ARB; however, the reports must be made available to ARB and districts upon request.

Miscellaneous Amendments

To provide additional clarity to the Statewide Regulation, the amendments would modify, add, and delete terms in the definition section, delete outdated provisions, require non-operational engines in the program to be made operational, specify the process for the change of ownership of registered engines, and clarify the requirements for identical replacements of engines. In addition, the amendments would allow non-road engines manufactured under the flexibility provisions pursuant to 40 CFR, Part 89 or title 13 of the CCR to register in the Statewide Program. Other modifications included correcting formatting and grammatical errors, and other minor administrative changes. These changes are non-substantive and are intended to provide additional clarity and enforceability to the Statewide Regulation.

15-Day Changes

At the hearing, the staff presented, and the Board approved, modifications to the originally proposed amendments to respond to comments received after the ISOR was published. The Board also directed staff to work with representatives from the California Air Pollution Control Officer's Association (CAPCOA) and affected industry on developing a uniform statewide fee schedule for the enforcement of the Statewide Regulation by the local air districts. These modifications were made available for 15-day public comment periods. The following is a summary of these modifications:

- A. Section 2451(c)(5)(C) was modified to allow the use of generators registered in the Statewide Program to supply power to the grid if they are used to maintain grid stability during emergency or unforeseen events.
- B.** Section 2451(c)(5)(E) was modified and moved to section 2456(j). The modification allows certain engines (certified and uncertified engines) registered in the Statewide Program prior to the effective date of the amended Statewide Regulation, to remain registered in the program. Engines registering in the Statewide Program after the effective date and used with equipment ineligible for registration will be required to meet United States Environmental Protection Agency (U.S. EPA) and ARB non-road engine emission standards.
- C. Section 2451(d) was added to provide an owner or operator of any engine or equipment that loses its eligibility in the Statewide Program 90 days after notification by ARB to apply to the appropriate district for a permit to operate. Operation of the engine or equipment can continue under the Statewide Program until the district issues or denies a permit to operate.
- D. The "Note" at the end of section 2451(b)(2) describes the federal Clean Air Act preemption that does not allow states, including California, from establishing emission standards related to the control of emissions for new engines rated less than 175 horsepower and used in farm and construction operations. Because it does not represent a requirement in the Statewide Regulation and is only intended to provide background information, the "Note" has been deleted. With the deletion of the "Note," the definitions contained in section 2452 for "construction equipment," "farm equipment," and "primarily used" are not used elsewhere in the Statewide Regulation and have also been deleted.
- E. Staff added definitions in sections 2452(i) and (t) for "Existing Program Participant" and "New Program Participant," respectively.
- F. The definition of "Portable" contained in section 2452(y) was modified to clarify that the period the engine or equipment is maintained at a storage facility should not be included in the residency time determination at a facility or stationary source.

- G. The definition for “Resident Engine” contained in section 2452(gg) was modified to improve clarity of the Statewide Regulation by providing examples of acceptable documentation to demonstrate residency of an engine operating in California.
- H. Section 2453(e) was modified to temporarily allow additional time (180 days, instead of 90 days) for ARB staff to process applications received after the effective date of the amended Statewide Regulation. This provision expires on December 31, 2005, after which it reverts back to the 90 days processing time limit. This provision is intended to allow ARB staff additional time, if necessary, to process the large number of applications expected once the amendments become effective.
- I. Section 2456(d)(5) was modified to allow engines manufactured under the flexibility provisions pursuant to title 40, Code of Federal Regulations, part 89 or title 13 of the CCR to register in the Statewide Program.
- J. Section 2458(b)(6)(A) was added to improve enforceability by requiring engines registering in the Statewide Program on or after the effective date of the amended Statewide Regulation, and subject to daily fuel consumption limits to install and track the fuel consumption with fuel flow meters.
- K. Section 2458(b)(6)(B) was modified to clarify that engines registered in the Statewide Program prior to the effective date of the amended Statewide Regulation, and subject to daily fuel consumption limits can continue to use their existing methods to track fuel consumption.
- L. Additional language was added to section 2461(c), which will require new program participants, until December 31, 2005, to pay an additional \$100 registration fee for each engine registered in the Statewide Program. This fee is intended to cover additional temporary resources for processing applications and for additional public outreach to educate owners and operators of portable engines of the various regulatory requirements. On or after January 1, 2006, the additional \$100 registration fee will be rescinded. In addition, the language clarifies that the increase in registration fees will not apply to applicants who have lost permit exemptions from the districts or as a result of legislative actions.
- M. To provide additional flexibility to program participants, language was added to section 2462(a) to allow program participants to select either a three-year or a five-year registration and renewal schedule. Table 2 in section 2461 was modified to reflect the fees associated with a 5-year registration or renewal schedule.
- N. Staff made minor non-substantive modifications throughout the Statewide Regulation to provide additional clarity and improve enforceability. These amendments include correcting formatting and grammatical errors, and other non-substantive administrative changes.

Consistency with Related Federal, State, or Local Requirements

There is no federal program that issues operating permits or register portable engines and associated equipment units. However, the Clean Air Act Amendments of 1990 preempted states from adopting emission standards for new nonroad engines or vehicles. Under section 209(e) of the Clean Air Act, all states are precluded from adopting emissions standards and other requirements for new nonroad engines smaller than 175 horsepower (hp) and used in construction or agricultural equipment or vehicles. California, in recognition of its longstanding mobile source program and the challenging air quality problems in the state, was allowed to adopt and enforce emission standards for other new nonroad engines after receiving authorization to do so from the United States Environmental Protection Agency (U.S. EPA). Although the Statewide Regulation and the proposed amendments conform to this preemption and do not impose emission standards, ARB will seek authorization from the U.S. EPA.

The 35 local air districts in California operate permit programs for emission sources. In most cases, portable engines and associated portable equipment can be subject to varying permit requirements and fee structures established by the districts. Five of those districts have also implemented permit programs specifically for portable equipment. Portable engine and equipment units operate in multiple air districts; therefore, permits may be required in each district. Instead of obtaining multiple district permits from each district, a portable engine owner/operator can voluntarily register the engine in the Statewide Program.

The Statewide Program was established by legislation which required ARB to adopt a regulation that created a uniform statewide system to register and regulate portable engines and associated equipment units. This voluntary program allows an engine owner/operator to register in the Statewide Program and operate their equipment throughout California without having to obtain individual district permits. ARB is charged with the administration of the registration program while the districts are responsible for the enforcement of engines and equipment units registered under the Statewide Program. Portable equipment not registered with the ARB is subject to district permitting requirements.